NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

N & R Quality Care, LLC *and* India Taylor (nee Jones). Case 5–CA–34079

October 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On November 17, 2008, the Board issued an Order¹ that, among other things, ordered the Respondent to make whole employee India Taylor (nee Jones) for any loss of earnings and other benefits, with interest, resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) and (4) of the Act. On April 21, 2009, the United States Court of Appeals for the Fourth Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of backpay due the discriminatee under the Board's Order, the Regional Director issued a compliance specification and notice of hearing on July 31, 2009, alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated August 25, 2009, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by September 1, 2009, a motion for default judgment would be filed. To date, the Respondent has failed to file an answer.

On September 11, 2009, the General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On September 15, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again failed to file a response. The allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment³

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations provides that if the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification, and we will order the Respondent to pay that amount to the discriminatee, plus interest accrued to the date of payment.⁴

ORDER

The National Labor Relations Board orders that the Respondent, N & R Quality Care, LLC, Fredericksburg,

¹ Unpublished Order adopting, in the absence of exceptions, the decision of Administrative Law Judge Michael A. Rosas issued on September 30, 2008 (JD–53–08).

² No. 09–1157.

³ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See Snell Island SNF LLC v. NLRB, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. September 11, 2009) (No. 09-328); New Process Steel v. NLRB, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); Northeastern Land Services v. NLRB, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. August 18, 2009) (No. 09-213). But see Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed sub nom. NLRB v. Laurel Baye Healthcare of Lake Lanier, Inc., _U.S.L.W._ (U.S. September 29, 2009)(No. 09-377).

⁴ The compliance specification states that "in satisfaction of the remaining terms of the Board's Order, Respondent must remove from its records all references to Taylor's discharge and must notify her in writing that this has been done and that the unlawful discharge will not be used against her." By failing to file an answer, the Respondent has effectively admitted that it has failed to take these actions. Nevertheless, we find it unnecessary in this proceeding to order the Respondent to remove the reference to the unlawful discharge from its files and give Taylor the required notification, as these actions are included in our previous Order that has been enforced by the court of appeals. See *Bryan Adair Construction Co.*, 341 NLRB 247, 247 fn. 4 (2004).

Virginia, its officers, agents, successors, and assigns, shall make whole discriminatee India Taylor by paying her the amount of backpay listed below, plus interest accrued to the date of payment, as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and the Employer's share of FICA contributions which totals \$973.51, less payments to date⁵ and minus tax withholdings required by Federal and State laws:

Backpay owed to Taylor	\$12,725.64
Less backpay paid	9,000.00
Plus FICA contributions	973.51
TOTAL AMOUNT NOW DUE:	\$4,699.15

Dated, Washington, D.C. October 30, 2009

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁵ As set forth in the compliance specification, in partial satisfaction of its backpay obligation, the Respondent remitted the following payments to the Regional Office: on about March 30, 2009, a payment of \$5000 for backpay due and \$625.09 in interest due; on about June 8, 2009, a payment of \$2000 for backpay due; and on July 13, 2009, a payment of \$2000 for backpay due. These sums are being held in escrow at the U.S. Treasury. The Respondent's payment of \$625.09 in interest will be credited against the amount of total interest accrued to the date of payment.